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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

BP AMERICA INC., and ATLANTIC RICHFIELD COMPANY, Plaintiffs, v. YERINGTON PAIUTE TRIBE, et al., Defendants.	Case No. 3:17-cv-00588-LRH-WGC **REPLY TO CONSOLIDATED RESPONSE TO MOTION TO DISMISS AMENDED COMPLAINT FOR LACK OF JURISDICTION**

Defendants Yerington Paiute Tribe; Laurie A. Thom, in her official as Chairman of the Yerington Paiute Tribe; Albert Roberts, in his official capacity as Vice Chairman of the Yerington Paiute Tribe; and Elwood Emm, Linda Howard, Nate Landa, Delmar Stevens, and Cassie Roberts, in their official capacities as Yerington Tribal Council Members (collectively,

Defendants), file this Reply to Plaintiff's (herein, BP) Consolidated Response to the Motions to Dismiss (ECF No. 59) the Amended Complaint for Lack of Jurisdiction. In filing this Reply, Defendants do not waive, and expressly reserve, their sovereign immunity and all rights and defenses attendant thereto, as well as all defenses to this Court's jurisdiction.

BP's lawsuit must be dismissed (a) under the doctrine of sovereign immunity, because tribal officials do not exceed their authority in violation of federal law when they authorize and prosecute a tribal court lawsuit based upon on-reservation acts by the defendant; and/or (b) under the doctrine of exhaustion of tribal court remedies, because BP has not shown tribal court jurisdiction to be plainly lacking or patently violative of CERCLA, so the tribal court is entitled to decide its jurisdiction in the first instance.

SOVEREIGN IMMUNITY

The Yerington Paiute Tribe is entitled to dismissal because it is immune from suit in this forum. *See* ECF No. 51 at 4. BP's Response does not challenge the Ninth Circuit authority pronouncing this truism, but rather cites a single Fifth Circuit case that ostensibly permitted a tribe to be sued for injunctive relief. *See* ECF No. 59 at 10. That case is not the law of the Ninth Circuit, which requires that the claims against the Yerington Paiute Tribe be dismissed. *See, e.g., Imperial Granite Co. v. Pala Band of Mission Indians*, 940 F.2d 1269, 1271 (9th Cir. 1991) ("It is absolutely clear that the Pala Band, as an Indian tribe, possesses 'the common-law immunity from suit traditionally enjoyed by sovereign powers.' The immunity extends to suits for declaratory and injunctive relief.")

BP's claims against the Chairman, Vice Chairman, and five Councilmen are similarly prohibited. "Tribal sovereign immunity extends to tribal officers when acting in their official capacity and within the scope of their authority." *Lineen v. Gila River Indian Community*, 276 F.3d 489, 492 (9th Cir. 2002), *cert. denied*, 536 U.S. 939 (2002). Defendants recognize *Ex Parte Young* and its progeny, and that this Circuit has permitted injunctive lawsuits in federal courts against tribal officials—but only where it is sufficiently alleged that those tribal officials were acting in contravention of federal law, thereby exceeding their authority.

BP argues that the tribal officials' acts were beyond the scope of their authority because

the tribal court absolutely does not have jurisdiction over the claims in the tribal court complaint. Obviously, if tribal court jurisdiction has been demonstrably pled, or if that jurisdiction is *at least* colorable or plausible, then the tribal officials were acting "within the scope of their authority", not beyond it, in authorizing and prosecuting the tribal court complaint. On this, there is no disagreement: There is nothing excessive about the tribal officials' acts in authorizing and/or prosecuting the tribal court lawsuit if there is actual, or even plausible, tribal court jurisdiction.

Against this backdrop, BP argues that whether or not it "acted on the reservation" is dispositive, citing Ninth Circuit authority holding that tribal courts have jurisdiction over cases between Indian and non-Indians based on events occurring on the reservation. *See* ECF No. 59 at 12, 15, 17. We agree. If the tribal court complaint alleges on-reservation acts by BP, then the tribal court has jurisdiction and the tribal officials did not act in violation of federal law.

The tribal court complaint specifically, and repeatedly, alleges on-reservation acts by BP. *See*, *e.g.* ECF No. 3, Ex. A, ¶ 8 ("toxic and hazardous substances have been and are being released into the Environment from [BP's] Mine Site, sections of which are on the Plaintiff's property"); ¶ 26 (same); ¶ 27 (BP disposed of hazardous and toxic substances "on and around" the tribe's property); ¶ 36 (BP "intentionally depositing onto" the tribe's property); and ¶ 39 (BP "transport[ed] or stor[ed] their toxic and hazardous substances and wastes on [the tribe's] property.").

¶ 39 warrants special mention here, because BP's astonishing attempt to rationalize it away perfectly exposes its say-anything approach to avoiding tribal court jurisdiction. BP itself actually quoted ¶ 39 in its Original Complaint—acknowledging that the tribal court complaint alleged on-reservation conduct. But when Defendants pointed this out in their motion to dismiss that complaint, BP responded by quietly dropping that reference from its Amended Complaint. Yet it is BP's explanation of the tribe's ¶ 39's allegations that is truly noteworthy. BP claims that ¶ 39 does not allege on-reservation acts because it says only that BP lacked consent to actually transport and store the materials, not that BP *actually* transported or stored said materials. ECF No. 59 at 14.

That is quite the tortured reading of that allegation. How would a lack of consent to

come onto tribal land with hazardous materials be in any way relevant had BP not *actually* come onto tribal land with the hazardous materials? In other words, if BP had never come onto tribal land to store its hazardous waste, what factfinder would care whether they had consent or not for something they never actually did? Obviously, lack of consent to enter and store hazardous materials is an allegation dependent upon BP actually entering and storing hazardous materials; otherwise, it is nonsensical. ¶ 39 is an allegation that BP transported hazardous wastes onto the tribe's property and stored it there.

BP's semantical gymnastics as to ¶ 39 speaks for itself. Numerous paragraphs in the tribal court complaint allege actual on-reservation conduct by BP. BP concedes that actual on-reservation conduct would give rise to tribal court jurisdiction, because an authorized lawsuit based upon on-reservation conduct is not in contravention of any federal law. Because such a lawsuit is not in contravention of federal law, tribal sovereign immunity extends to these tribal officers pursuant to *Lineen* and its progeny.[1]

EXHAUSTION OF TRIBAL COURT REMEDIES

In the event it nevertheless determined that these tribal officials do not have sovereign immunity, this Court still must dismiss BP's complaint because a tribal court is entitled to determine its own jurisdiction first, before that issue is considered by a federal district court. The doctrines of sovereign immunity and exhaustion of tribal remedies "are not inextricably intertwined", but rather "turn on wholly different factors." *Burlington N. & Santa Fe Ry. Co. v. Vaughn*, 509 F.3d 1085 (9th Cir. 2007).

Federal law has long recognized respect for comity and a resulting deference to a tribal

[1] Against this backdrop, BP argues that merely alleging that the tribal court lacks jurisdiction as a matter of law is enough. *See* ECF No. 59, pp. 5-6. But as the Ninth Circuit recognized in *Vaughn,* mere allegations belied by the facts before the court will not suffice. Usually, mere allegations can be enough. In this case, held up against the operative pleadings, they are not. If conclusory, baseless allegations belied by the facts are enough to negate tribal sovereign immunity, then the doctrine is effectively nullified. If BP's argument is taken to its logical extreme, every non-Indian defendant could baldly assert "the tribal court lacks jurisdiction over these claims" any time they were sued, thereby *automatically* divesting the tribal court of the case. That certainly is not what the Supreme Court intended after *Nat'l Farmers Union Ins. Co. v. Crow Tribe of Indians*, 471 U.S. 845, 856 (1985).

court as the appropriate court to determine its own jurisdiction in the first instance. *Grand Canyon Skywalk Dev., LLC v. 'SA' Nyu Wa Inc.*, 715 F.3d 1196, 1200 (9th Cir. 2013). The basis for the doctrine of exhaustion of tribal court remedies was articulated by the Supreme Court in *Nat'l Farmers Union Ins. Co. v. Crow Tribe of Indians*, 471 U.S. 845, 856 (1985), citing (1) a congressional policy of supporting tribal self-government and self-determination; (2) a policy of allowing the forum whose jurisdiction is being challenged "the first opportunity to evaluate the factual and legal bases for the challenge"; and (3) judicial economy being best served "by allowing a full record to be developed in the Tribal Court." [2]

BP's overarching argument is that in this case, this Court can disregard the doctrine of exhaustion of tribal remedies because there is no conduct alleged to have occurred on tribal lands. As demonstrated herein above, that is simply not true. The tribal court complaint repeatedly alleges on-reservation acts. *See* ECF No. 3, Ex. A, ¶¶ 8, 9, 26, 27, 36, 39. Those allegations outright negate one of two pleaded exceptions to the doctrine of tribal court remedies, that being the assertion that tribal court jurisdiction is "plainly" lacking.[3] That exception fails—and the district court is required to dismiss—if tribal court jurisdiction is "colorable" or "plausible". *See Atwood v. Fort Peck Tribal Court Assiniboine and Sioux Tribes*, 513 F.3d 943, 948 (9th Cir. 2008).

Since BP admits that a non-Indian can be sued in tribal court for on-reservation conduct,

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[2] In *Nat'l Farmers*, the Supreme Court held that as a general rule, exhaustion of tribal court remedies "is **required** before such a claim may be entertained by a federal court." *Nat'l Farmers Union*, 471 U.S. at 857 (emphasis added). Where tribal court jurisdiction is colorable or plausible on the face of the tribal court complaint, federal district courts must require non-Indians to exhaust their tribal court remedies—which include moving to dismiss in tribal court based on lack of jurisdiction, which BP is in the process of doing—before entertaining a challenge to the tribal court's jurisdiction. *Boozer v. Wilder*, 381 F.3d 931, 935 (9th Cir. 2004); *Stock West, Inc. v. Confederated Tribes of the Colville Reservation*, 873 F.2d 1221, 1228 (9th Cir. 1989) ("Therefore, under *Nat'l Farmers*, the federal courts should not even make a ruling on tribal court jurisdiction…until tribal remedies are exhausted.") (emphasis added); *Marceau v. Blackfeet Hous. Auth.*, 519 F.3d 838, 843 (9th Cir. 2008) ("Ordinarily, exhaustion of tribal remedies is **mandatory**.") (emphasis added).

[3] BP bears the burden of making a *substantial* showing that tribal court jurisdiction is plainly lacking, and that exception is to be *narrowly* applied by this Court. *Thlopthloco Tribal Town v. Stidham*, 762 F.3d 1226, 1238-39 (10th Cir. 2014)

the tribal court's jurisdiction here is certainly "colorable" or "plausible". Tellingly, BP spends much of its Response arguing about what can and will be *proven. See, e.g.,* ECF No. 59 at 14-15. BP may soon persuade the tribal court that it does in fact lack jurisdiction, despite the tribe's allegations. To wit, it may persuade the tribal court that it did not deposit hazardous waste on tribal land, or that the Wabuska drain did not emanate from BP's mine across tribal land, and was not managed by BP as a hazardous waste disposal route as it ran across the reservation, etc. But those allegations of on-reservation conduct certainly make tribal court jurisdiction at the very least colorable or plausible.[4]

It is not necessary for this Court to engage in any further analysis under *Montana*, because in the Ninth Circuit, tribal courts have jurisdiction over lawsuits based on non-Indian conduct on tribal land, irrespective of *Montana*. *See Water Wheel Camp Recreational Area, Inc. v. LaRance,* 642 F.3d 802, 813 (9th Cir. 2011). Even so, Defendants' motion to dismiss addressed *Montana*, just in case BP attempted to invoke it. *See* ECF No. 51 at 13-15.

In this regard, BP attempts to distinguish Defendants' *Montana* related cases by arguing that said cases involved on-reservation allegations. That attempt fails for two reasons. First, Defendants *have* made on-reservations claims. Second, Defendants' cases give examples of what kind of harm threatens the health and welfare a tribe. Where the threat arose is not determinative as to whether *Montana* would apply here (if it were not for *Water Wheel*). Rather, the question is whether the tribal court complaint alleges harm that threatens the health and welfare of the tribe to the point of imperiling subsistence. BP argues it does not, citing to *Evans v. Shoshone-Bannock Land Use Policy Comm'n*, 736 F.3d 1298 (9th Cir. 2013). Conversely,

[4] This holds true even if this Court disagrees with the tribe's assertion that additional conduct, separate and apart from the on-reservation conduct discussed *supra*, makes tribal court jurisdiction colorable or plausible because certain other claims arose on-reservation, even if the related conduct itself did not occur on the reservation. *See* ECF No. 51 at 11-13. Those allegations are merely an *additional* basis for colorable tribal court jurisdiction. The tribe argues that there is no authority prohibiting off-reservation acts polluting on-reservation being heard in tribal court. BP disagrees, and claims that the tribal court does not have jurisdiction Maybe BP's interpretation of the four cases argued on that point will win the day. Maybe not. But because tribal court jurisdiction cannot be said to be plainly lacking thereto, it is for the tribal court to decide in the first instance. *See Elliot,* 566 F.3d at 847.

Defendants distinguish *Evans* and cite the recent *FMC Corp. v. Shoshone-Bannock Tribes*, 2017 U.S. Dist. Lexis 161387 (D. Idaho, Sept. 28, 2017), where decades-long contamination and massive amounts of toxic waste (like to the 95 tons of toxic uranium pollution in the present case) was deemed to be "the type of threat that falls within *Montana*". *See* ECF No. 51 at 14-15. Were a court to engage in a *Montana* analysis—and pursuant to *Water Wheel*, it need not—it would evaluate whether the tribal court complaint falls within that *Montana* harm and welfare exception, as in *FMC Corp*., or outside of that exception, as in *Evans*. But because it cannot be said that tribal court jurisdiction is "plainly" lacking, any such evaluation should be made by the tribal court in the first instance. *Elliot*, 566 F.3d at 847.

BP next argues that the doctrine of exhaustion of tribal court remedies is inapplicable here because tribal court jurisdiction "would patently violate the express jurisdictional prohibitions of CERCLA." *See* ECF No. 59 at 22. This is a much higher hurdle to clear than BP implies. "A substantial showing must be made by the party seeking to invoke [the 'express jurisdictional prohibition'] exception to the tribal exhaustion rule." *Kerr-McGee Corp.*, 115 F.3d at 1502. Tribal courts "rarely lose the first opportunity to determine jurisdiction because of an 'express jurisdictional prohibition.'" *Id.; Landmark Golf Ltd. Pshp. v. Las Vegas Paiute Tribe*, 49 F. Supp. 2d 1169, 1174 (D. Nev. 1999).

A claim that a federal statute deprives a tribal court of jurisdiction will fail, unless it can be shown that the statute contains an express jurisdictional prohibition. *See United States v. Plainbull*, 957 F.2d 724, 726-28 (9th Cir. 1992). BP fails to make this requisite showing. It cites no case where tribal court jurisdiction violated—let alone *patently* violated—any CERCLA exclusive jurisdictional prohibition. That bears repeating: Despite the substantial showing required to invoke this exception, BP has not cited a single case where tribal court jurisdiction was found to violate any CERCLA exclusive jurisdiction prohibition.

Instead, BP argues that Section 113(b) of CERCLA at 42 U.S.C. 9613(b) generally provides for exclusive jurisdiction of this Court because of its provision that says federal courts have exclusive jurisdiction over claims that "arise under" CERCLA. *See* ECF No. 59 at 22. But claims only "arise under" CERCLA if they constitute a "challenge to [a] CERCLA cleanup."

See ARCO Envtl. Remediation, L.L.C. v. Dep't of Health and Envtl. Quality, 213 F.3d 1108, 1115 (9th Cir. 2000). The Ninth Circuit has recognized challenges to a CERCLA cleanup as claims that are related to CERCLA's remedial goals, interfere with CERCLA remedial actions, seek to improve a CERCLA cleanup, or seek to dictate specific remedial actions or alter the method of cleanup. *See McClellan v. Ecological Seepage Situation v. Perry*, 47 F.3d 325, 330 (9th Cir. 1995); *ARCO Envtl*., 213 F.3d at 1115. BP argues that the tribal court complaint does all of these things. In fact, it does none of them.

BP rests its primary argument—that CERCLA rests exclusive jurisdiction of these claims in federal court to the exclusion of tribal court—on a single case involving a different statute, the RCRA. *See* ECF No. 59 at 22-23. BP represents to the Court that CERCLA and RCRA involve "very similar language" on exclusive jurisdiction, and so the holding in *Blue Legs v. Bureau of Indian Affairs*, 867 F.2d 1094 (8th Cir. 1989), that the RCRA's exclusive jurisdiction provision negated the exhaustion requirement, should apply here. What BP leaves out, though, is that the RCRA *expressly mentions tribes* and subjects them to suits, while mandating a federal forum. *Id.* at 1097. Conversely, CERCLA contains no such reference to tribes.[5]

BP then misstates the underlying holding and basis for the Tenth Circuit's *Kerr-McGee*, 915 F. Supp. 273, *aff'd Kerr-McGee v. Farley*, 115 F.3d 1498 (10th Cir. 1997). In that case, the district court actually held that tribal court remedies had to be exhausted because the statute

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[5] Moreover, the Eight Circuit, where *Blue Legs* was decided, has long held that broad interpretations of express jurisdictional prohibitions "would render the exhaustion requirement virtually meaningless, allowing a tribal court to assert jurisdiction over an action only after a federal court had effectively determined the merits of the case". *See Reservation Tel. Co-op.*, 76 F.3d at 185. Furthermore, that same Circuit has emphasized that under the exhaustion doctrine *tribal courts* should act first to determine whether a statute preempted tribal jurisdictions, stating:

> "It is true that under certain circumstances, preemptive federal statutes may serve to relieve a party from exhausting tribal court remedies, or may serve to curtail the tribe's power to assert jurisdiction. These notions notwithstanding, it bears repeating that under the exhaustion doctrine, the tribal courts themselves are given the first opportunity to address their jurisdiction and explain the basis (or lack thereof) to the parties."

Bruce H. Lien, 93 F.3d at 1421. The only other case relied on by BP, *Razore*, is distinguished by Defendants in ECF No. 51 at 18.

being invoked to bar tribal court jurisdiction was inapposite to that of *Blue Legs*, because the inference that the federal government had taken away tribal jurisdiction was based on Indians being addressed in the jurisdictional language of the statute itself, and so "Congressional intent to affect Indians was clear." *Id.* at 278. No such language appeared in the Price-Anderson Act at issue in *Kerr-McGee*, just as no such language appears in CERCLA. The court concluded that it was not aware of *any* case "where a statute which makes no mention of 'Indians' or 'Indian Tribes' has been construed to strip tribes" of their jurisdiction. *Id*.

Next, BP tries the argument that jurisdiction lies exclusively in federal court because the tribal court complaint challenges a CERCLA cleanup. ECF No. 59 at 23-24. While the tribe certainly references cleanup efforts as background in its tribal court complaint, including historical shortcomings of the cleanup, none of its *claims* challenge the cleanup, or effect the cleanup in any way going forward. Under Ninth Circuit authority, this mere reference to historical remediation efforts, even questioning or complaining about BP's lack of contribution to these efforts as background, is not enough if the *claims* made by the tribe do not relate to CERCLA's remedial goals, interfere with CERCLA remedial actions, seek to improve a CERCLA cleanup, or seek to dictate specific remedial actions or alter the method of cleanup going forward. *See ARCO Envtl. Remediation LLC v. DHEQ,* 213 F.3d 1108, 1115 (9th Cir. 2000)*; McClellan v. Ecological Seepage Situation v. Perry*, 47 F.3d 325, 330 (9th Cir. 1995). Claims for lost property value and medical monitoring of the health of tribal members do none of these things. They have nothing to do with CERCLA's standards. In fact, BP's leading citation, *ARCO Envtl*., expressly held that CERCLA's exclusive jurisdiction provision is not intended "to serve as a shield against litigation that is unrelated to disputes over environmental standards." *ARCO Envtl*., 213 F.3d at 1115; *see also Southeast Texas Environmental, L.L.C. v. BP Amoco Chemical Co*., 329 F. Supp. 2d 853, 871 (S.D. Tex. 2004) ("Because Plaintiffs' **claims** bear only on the liability of individual defendants and not on the cleanup itself, the Court concludes that Plaintiffs have not challenged a CERCLA cleanup.") (emphasis added).

As was the case in *ARCO Envtl*., the tribe's claims for lost property value and medical monitoring of the health of tribal members do not challenge remedial standards or actions, nor

seek to interfere with the remedial process, elements necessary for exclusive federal court jurisdiction. Merely acknowledging that administrative orders on cleanup have been issued and that remedial efforts continue (ECF No. 59 at 24) do not amount to a challenge under *ARCO Envtl*. *See* ECF No. 51 at 17-18.[6]

In sum, the state common law claims pled in the tribal court complaint do not interfere with, nor seek to improve, dictate or alter, the remediation going forward; they do not seek to compel BP to do anything at all relating to the cleanup going forward. Ultimately, the tribe's claims seek only damages for lost property value and medical monitoring of the health of tribal members. Those claims, which are wholly independent of how, or even if, BP is CERCLA-compliant, cannot be said to be "patently violative" of CERCLA's exclusive jurisdiction provision (if, in light of *Kerr-McGee*, such a provision even applies to a tribe). BP's effort to re-plead the tribal court complaint to shoehorn it into CERCLA is transparent.

BP's final CERCLA-based argument—that *no court* can hear these claims—is unsupportable. The tribe is not seeking recovery for injuries to natural resources. BP admits that recovery for such an injury is not alleged. *See* ECF No. 59 at 27. The tribe, again, is seeking recovery not for loss of natural resources, but rather loss of property value and the cost of medical monitoring of the health of tribal members. Defendants cite a slew of cases holding that victims of toxic waste can bring state law claims like these for damages. *See* ECF No. 51 at 19. BP's footnoted attempt to distinguish and argue against the applicability of these cases falls flat. *See* ECF No. 59 at fn. 17. In the end, BP founds bases this entire argument on *New Mexico v. Gen Elec Co.* 467 F.3d 1223 (10th Cir 1249). But *New Mexico* is distinguishable because (a) plaintiff pled a CERCLA claim, and then eventually (b) tied its damages claim to those damages

[6] BP then cites *Diamond X Ranch, LLC v. Atl. Richfield Co*., 51 F. Supp. 3d 1015, 1022 (D. Nev. 2014) for the proposition that because damages might be substantial, it might end of interfere with cleanup. But Diamond X sought civil penalties under the Clean Water Act of $37,500 per day, totaling $560 million, not state common law damages for lost property value and the cost of medical monitoring. BP's footnoted argument that the factfinder in this case will have to decide whether the cleanup was inadequate or too slow (ECF No. 59 at 25, fn. 16) is untenable. The factfinder needs to decide nothing of the kind in order to consider tribe's claims for property value damages and medical monitoring.

not recoverable under CERCLA for groundwater contamination, for which plaintiff sought injunctive relief. As such, the 10th Circuit concluded that "the core controversy" had become what damages were remediation-related under CERCLA. *Id.* at 240. That is not any part of the tribe's claims against, or "core controversy with", BP.

To be clear, BP can still raise all of its make all of these jurisdictional challenges in tribal court—as it already has. But here, those arguments do not meet the high burden of establishing that the tribal court complaint is "patently violative" of CERCLA's jurisdictional provisions.

Finally, the last page of BP's Response takes one parting shot at arguing that tribal court jurisdiction is "plainly" lacking. This time, BP argues that it wasn't validly served. But there are no specific requirements for service under tribal court rules. BP does not, and cannot, point to any tribal court procedures violated by sending the complaint Federal Express to its Registered Agent for Service, nor any violation of any tribal court rules, federal rules, or federal common law. Citing to the Hague Convention—which does not apply here—does nothing to bolster its claim. Whether overnighting a copy of the complaint to BP's registered agent for service is *ultra vires* and an affront to due process, or whether BP's position would require an unwarranted negating of tribal court jurisdiction and is an affront to comity, is for the tribal court to decide in the first instance. *Elliot*, 566 F.3d at 847. Without any specific service requirements to cite to, it cannot be said that the tribal court "plainly" lacks jurisdiction because of how BP was served.

In closing, sovereign immunity applies because tribal officials do not exceed their authority in violation of federal law when they authorize and prosecute a tribal court lawsuit based upon on-reservation acts of the defendant. Alternatively, the doctrine of exhaustion of tribal court remedies applies because BP has not demonstrated that tribal court jurisdiction is plainly lacking or patently violative of CERCLA; therefore, the tribal court is entitled to decide its jurisdiction in the first instance. On either of these bases, BP's lawsuit must be dismissed.

DATED this 21st day of December, 2017.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that service of the foregoing *REPLY TO CONSOLIDATED RESPONSE TO MOTION TO DISMISS AMENDED COMPLAINT FOR LACK OF JURISDICTION,* was made through the court's electronic filing and notice system (CM/ECF) or, as appropriate, by first class mail, addressed to the following on December 21, 2017.

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